

ORIGINAL

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
OCT 31 2007
10:36
CLERK, U.S. DISTRICT COURT
By _____
Deputy

4-0707-658-Y
CIV. ACTION NO. _____

COLLECTIVE ACTION COMPLAINT

Defendants.

PLAINTIFFS' ORIGINAL COMPLAINT – COLLECTIVE ACTION – Page 1

employment, Geter was employed by an enterprise engaged in commerce within the meaning of 29 U.S.C. § 206(a) and § 207(a). Further, Geter was personally engaged in commerce. The work Geter performed was directly related to the business conducted by Defendants in interstate commerce.

3. Plaintiff brings this action on behalf of himself and those current and former employees similarly situated to him, through the Defendants' enterprise, for compensation and other relief under the FLSA, as amended, 29 U.S.C. § 201, *et seq.*

4. Defendant Rhino Medical Staffing, LLC a/k/a Rhino Medical Services ("Rhino") is a domestic corporation with its principle place of business in Arlington, Texas. Rhino was an "employer" within the meaning of FLSA, 29 U.S.C. § 203(d).

5. Defendant Patrick Eskew ("Eskew") was the owner and/or operator of Rhino during the applicable statute of limitations. Eskew was an "employer" within the meaning of FLSA, 29 U.S.C. § 203(d). Eskew acted directly or indirectly in the interest of himself and the Defendants in relation to Plaintiff and the putative class. The actions of Eskew resulted in a tortuous injury to Plaintiff that occurred in the state of Texas. Eskew had control over the duties assigned and wages paid to the Plaintiff in the state of Texas. Texas has an interest in ensuring that its employees are compensated in accordance with the law and that its businesses are not subject to unfair competition from competitors who do not comply with the law.

6. Defendant Joe Brunson ("Brunson") was the owner and/or operator of Rhino during the applicable statute of limitations. Brunson was an "employer" within the meaning of FLSA, 29 U.S.C. § 203(d). Brunson acted directly or indirectly in the interest of himself and the Defendants in relation to Plaintiff and the putative class. The actions of Brunson resulted in a tortuous injury to Plaintiff that occurred in the state of Texas. Brunson had control over the

duties assigned and wages paid to the Plaintiff in the state of Texas. Texas has an interest in ensuring that its employees are compensated in accordance with the law and that its businesses are not subject to unfair competition from competitors who do not comply with the law.

7. Defendants acted in all respects pertinent to this action as the agent of the other, carried out a joint scheme, business plan, or policy in all respects pertinent to this suit, and the acts of each are legally attributable to the other. The Defendants essentially operate as a single entity, and share resources and physical facilities.

III. COLLECTIVE ACTION ALLEGATIONS

8. During the statutory period, Plaintiff and the similarly situated employees routinely worked as Recruiters for Defendants in excess of forty (40) hours per week without overtime compensation.

9. Defendants operate a medical staffing company.

10. Plaintiff and the similarly situated employees had the same job duties. They would place phone calls medical professionals in the attempt to get them to sign contracts with Defendants.

11. Nothing about their job exempts Recruiters from the overtime requirements of the FLSA. The FLSA requires these employees to be paid at a rate of one-and-one-half times their regular rate of pay for each hour worked over forty in a workweek.

12. Instead of being paid hourly with overtime, Recruiters were paid a base salary plus commission.

13. These practices violate the provisions of the Federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq., specifically § 206 and § 207(a)(1). As a result of these unlawful practices, Plaintiffs and the similarly situated employees suffered a loss of wages.

14. Defendants showed reckless disregard for the fact that their failure to pay their agents overtime compensation and minimum wages was in violation of these laws. Defendants were willful in violating the FLSA

IV.
JURY DEMAND

15. Plaintiffs exercise their right to a jury and tender the appropriate fee.

V.
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and all employees similarly situated who join in this action demand:

1. Issuance of notice as soon as possible to all Recruiters who are or were employed by Defendants during any portion of the three years immediately preceding the filing of this action. Generally, this notice should inform them that this action has been filed, describe the nature of the action, and explain their right to opt into this lawsuit if they were not paid minimum wage for hours worked as agents during any portion of the statutory period or if they worked hours in excess of forty (40) in any week during the statutory period, but were not paid overtime compensation;

2. Judgment against Defendants for an amount equal to Plaintiffs' unpaid back wages at the applicable overtime rate;

3. Judgment against Defendants that their violations of the FLSA were willful;

4. An equal amount to the overtime and minimum wage damages as liquidated damages;

5. To the extent that liquidated damages are not awarded, an award of prejudgment interest;

6. All costs and attorney's fees incurred prosecuting these claims;
7. Leave to add additional Plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court;
8. Leave to amend to add claims under applicable state laws;
9. Injunctive relief enjoining future violations of the FLSA by Defendants of the type complained of by Plaintiffs; and
10. For such further relief as the Court deems just and equitable.

Respectfully submitted,
ROB WILEY, P.C.

By: 

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Attorney for Plaintiffs

JS 44 (Rev. 10/06)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Steven Geter		DEFENDANTS Rhino Medical Staffing, LLC, Patrick Eskew, Joe Brunson	
(b) County of Residence of First Listed Plaintiff (EXCEPT IN DISTRICT OF COLUMBIA CASES)		County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.	
(c) Attorney's (Firm Name, Address, and Telephone Number) Robert J. Wiley, Rob Wiley, P.C., 3131 Turtle Creek Blvd., Ste. 310, Dallas, TX 75219 (214) 528-6500		Attorneys (If Known) None Known.	

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)			
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	PTF <input type="checkbox"/> 1 Citizen of This State	DEF <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4 Citizen of Another State	DEF <input type="checkbox"/> 4 Incorporated and Principal Place of Business In Another State
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<input type="checkbox"/> 2 Citizen of Another State	<input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 Citizen or Subject of a Foreign Country	<input type="checkbox"/> 5 Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)						
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION Brief description of cause: Unpaid overtime/Fair Labor Standards Act

VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) PENDING OR CLOSED (See instructions):	JUDGE	DOCKET NUMBER
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DATE: 10-30-07 SIGNATURE OF ATTORNEY OF RECORD: [Signature]

FOR OFFICE USE ONLY

RECEIPT # FW4554	AMOUNT 350	APPLYING IFP	JUDGE Y	MAG. JUDGE
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

Civil Filing Notice - Fort Worth Division

CIVIL ACTION NO: _____

4-07 CV - 658 - Y

This case has been assigned to District Judge: _____

(Complete if applicable)

TRANSFERRED FROM: _____

DATE FILED: _____

Civil cases are assigned to a judge by random draw. A docket clerk for each judge maintains the recording of documents filed with the Clerk. A complete list of phone numbers for both the judges' chambers and the docket clerks is provided.

Judge	Court Settings	Pleadings Filed
(A) Judge John H. McBRYDE Even Cases: 850-6652 Odd Cases: 850-6653	(817)850-6650	(817)850-6611
(Y) Judge Terry R. MEANS	(817)850-6673	(817)850-6612
(BE) Magistrate Judge Charles BLEIL	(817)850-6690	(817)850-6697

For access to local rules, attorney admission information, frequently asked questions, common forms, filing instructions, and records information, please visit our web site at www.txnd.uscourts.gov. To speak to someone in the district clerk's office, please call (817) 850-6601.

To receive electronic access to court docket sheets and filed documents, contact the PACER Service Center at www.pacer.pcs.uscourts.gov or by phone at 1-800-676-6856 for a log-in and password.